THE HON'BLE SRI JUSTICE C.V. RAMULU

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+W.P.No.16273 of 2000

%Dated 10-8-2007

Between:

Maj.Gen.(Retd.) A.V.Rao ..... Petitioner

and

The Union of India, rep. by
Secretary, Ministry of Defence,
Army Headquarters,
New Delhi-110 001
and others ….. Respondents

!Counsel for the Petitioner : SHRI BHASKARA RAO BANDARUPALLI

^Counsel for Respondents: SHRI A. RAJASEKHAR REDDY
ASST.SOLICITOR GENERAL OF INDIA

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> HEAD NOTE:

? Cases referred

1. 1996(2) SCC 187
2. AIR 1998 SC 2862
3. 1991(2) SCC 266
4. 1983(1) SCC 305

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Friday, the 10th day of August,2007

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ORDER:

This Writ Petition is filed seeking a Mandamus declaring Proceedings No.M/Prov/M/MODP/MNL/1110/2000 and Order No.G1/M/X1/1042/MODP/00, dated 9-8-2000 of the 2nd respondent and letter No.3023/PPO/2K, dated 12-8-2000 of the 6th respondent as arbitrary, illegal, violative of principles of natural justice and contrary to Articles 14,16 and 19(1)(g) of the Constitution of India and consequently to direct the respondents to continue to pay the pension to the petitioner every month as per Corrigendum PPO No.M/MODP/33028/99 issued by the 2nd respondent.

Petitioner joined Indian Army as a Commissioned Officer with effect from 12-6-1960 and rose in ranks to the post of Major General and sought premature retirement with effect from 31-5-1991 to enable him to join as Executive Director in Hindustan Cables Limited. He joined at Hindustan Cables Limited with effect from 1-6-1991. According to him, he had commuted 100% of pension at the time of his appointment in Hindustan Cables Limited. Therefore, he did not draw any pension from 1-6-1991 till 31-12-1995 i.e. while in service of

Hindustan Cables Limited and subsequently also. According to the petitioner, after the V Central Pay Commission recommendations were accepted, he became eligible for 'one rank one pension' scheme as contemplated by the Ministry of Defence, Government of India in letter No.1(1)/99/D(Pen/Services), dated 7-6-1999 and his pension was also modified vide Corrigendum PPO No.M/MODP/33028/99, granting 50% of the minimum of the revised scale of pay introduced with effect from 1-1-1996 for the rank of Major General as per the accepted policy of 'one rank one pension'. The Pension Disbursing Authority i.e. Syndicate Bank, Sainikpuri, Secunerabad, based on the modified letter issued by the 2nd respondent in Proceedings No.M/MODP/33028/99. paid pension along with arrears from 1-1-1996 to 30-6-2000. However, the new Chief of the 2nd respondent vide Corrigendum PPO No.M/Prov/M/MODP/MNL/1110/2000, dated 24.7.2000 cancelled the modified PPO No.M/MODP/33028/99 *in toto* without providing any right of hearing or without issuing any show cause notice to the petitioner. Thereafter, 2nd respondent directed the Pension Disbursing Authority of the petitioner i.e. Syndicate Bank, Sainikpuri Branch, Secunderabad (6th respondent), vide letter No.G1/M/X1/1042/MODP/00, dated 9-8-2000 to recover the amount paid to him as pension till June,2000. Petitioner was also directed by the 2nd respondent to deposit the amount in lumpsum and his pension was stopped with effect from July,2000. In view of the above, 6th respondent, vide letter NO.3023/PPO/2K, dated 12-8-2000 directed the petitioner to deposit a sum of Rs.4,04,975/- being pension paid from 1-1-1996 to 30-6-2000 forthwith. He was also cautioned by the 6th respondent that failure to deposit back the amount, will result in legal

action. Hence, this Writ Petition.

A detailed counter affidavit has been filed on behalf of respondents 1 to 5 denying the allegations made by the petitioner. It is asserted that the petitioner as Major General retired prematurely on account of permanent absorption in Hindustan Cables Limited, a Public Sector Undertaking with effect from 31-5-1991. This was not a case of normal retirement. In this connection, Military Secretary's Branch, Army Headquarters, New Delhi vide letter No.30399/3415/MS(X), dated 30-10-1991 clearly stipulated that for the purpose of pro-rata pensionary benefits, the pensioner will be governed by the Ministry of Defence letter No.8(3)/86/A/D(Pen/Sers), dated 19-2-1987. The provisions of this letter will apply to those, who—

(a) while on deputation to Central Public Enterprises exercise an option for permanent absorption and/or discharged/permitted to retire pre-maturely from Defence Services for this purpose.
(b) are appointed in Central Public Enterprises on the basis of their own applications sent through proper channel in response to advertisements and are permitted to retire prematurely from service in the Defence Services for the purpose of taking up the appointment in the enterprises.

In accordance with paragraph-6 of the said letter, every absorbed person will be required to exercise an option within six months of absorption for either of the alternatives indicated below:-

(a) Receiving prorata monthly pension and death-cum-retirement gratuity as admissible under the rules
(b) Receiving death-cum-retirement gratuity and lump sum amount in lieu of monthly prorata pension worked out with reference to the commutation tables as obtaining on the date on which commuted value becomes payable.

Petitioner exercised his option for (b) above on 3/18-5-1991 for

receiving 100% lumpsum payment in lieu of monthly prorata pension i.e. a sum of Rs.4,56,344/- against the monthly prorata pension of Rs.3,330/- and the pension was reduced to 'Nil' from the date of payment of commuted value of pension or three months after the date of issuance of PPO No.M/877/91. Thus, the petitioner was not in receipt of pension as on 1-1-1996 and as such, he was neither entitled for consolidation of pension as per Government of India, Ministry of Defence letter No.1(2)/97/D(Pens/Sers), dated 24-11-1997 nor entitled for revision of pension as per the recommendations of V Central Pay Commission stipulated in Government of India, Ministry of Defence, New Delhi letter No.1(3)/98/D(Pens/Sers), dated 27-5-1998. In addition to lumpsum payment of Rs.4,56,344/-, petitioner was also sanctioned a sum of Rs.1,00,000/- on account of death-cum-retirement gratuity. The petitioner misconceived the whole scheme. 'One rank one pension' scheme referred to by the petitioner is not in the knowledge of the respondents. The notion of the petitioner that Corrigendum PPO No.M/MODP/033028/99 was issued in his favour just to give the benefit of 'one rank one pension' on representation made by him, is incorrect. This was issued on the basis of a mis-statement made by the petitioner. Government of India, Ministry of Defence letter No.1(1)/99/D(Pens/Sers), dated 7-6-1999 is not at all applicable to the case of the petitioner, as he was not in receipt of any kind of pension as on 1-1-1996, consequent on exercising his option to receive death-cum-retirement gratuity and a lump sum amount equal to 100% commutation of his prorata monthly pension. In fact, Government of India, Ministry of Defence letter dated 7-6-1999 was issued to further modify the provisions of Ministry of Defence letters dated 24-11-1997 and also 27-5-1998 to the extent that revised pension shall not be less than 50% of the minimum pay in the revised

scale of pay introduced with effect from 1-1-1996. The letter dated 7-6-1999 is for giving overall protection and this has been wrongly construed by the petitioner as 'one rank one pension' and deliberately submitted a wrong application on 8-3-1999 as if he is a normally retired pensioner through his banker, which misled the respondents and, therefore, Corrigendum PPO No.M/MODP/33023/99 was issued. The allegation of the petitioner that the modified pension payment order was cancelled without providing any right of hearing and without issuing any show cause notice is not correct and the said Corrigendum PPO was obtained by playing fraud. Petitioner was well aware of the fact that he opted for 100% commutation of his prorata monthly pension. The pension of the petitioner would be restored after completion of 15 years from the date of commutation and the benefit of V Pay Commission recommendations will be afforded in terms of Government of India, Ministry of Defence letter No.4/59/97-P&PW(D), dated 14-7-1998. Ordinarily, family pension admissible to the wife of the petitioner will be revised/consolidated in terms of Ministry of Defence letter dated 27-5-1998 as and when contingency arises. Petitioner completed 15 years from the date of commutation, in the year 2006. Since the revision of pension under V Pay Commission with effect from 1-1-1996 is not applicable to the petitioner in accordance with para 26(a) of Government of India, Ministry of Defence letter No.1(3)/98/(Penms/Sers), dated 27-5-1998 and para 7(a) of Ministry of Defence letter No.1(2)/97/D(Pens/Sers), dated 24-11-1997, Proceedings in PPO No.M/MODP/MNL/1110/2000 is just and valid. The Writ Petition is devoid of merits and is liable to be dismissed.

Learned counsel for the petitioner strenuously contended that all defence personnel, who commuted 100% pension have to be treated

on par with Central Government pensioners with all attendant benefits. Without taking this into consideration, the 2nd respondent had modified original order authorizing pension payment to the petitioner, without giving him right of hearing and without issuing any show cause notice. It is not known why Corrigendum PPO was cancelled. No show cause notice or prior notice was issued before canceling the modified PPO. The order cancelling modified pension order is unjust and discriminative. Petitioner being a pensioner, he should be treated on par with other Central Government pensioners and the petitioner's request for 'one rank one pension' was accepted by the Central Government. Simply because the petitioner was permitted to commute 100% pension, the revised pension as per V Pay Commission recommendations cannot be denied to him. Therefore, the action of the 2nd respondent in directing the 6th respondent to recover an amount of Rs.4,04,975/- from the petitioner is arbitrary and illegal. Petitioner is entitled for revised pension, though he commuted 100% of the pension, on the premise 'one rank one pension'. In support of his contentions, the learned counsel relied upon a Judgment reported in **WELFARE ASSOCIATION OF ABSORBED CENTRAL GOVT.EMPLOYEES v. UNION OF INDIA**[1] and drawn attention to paragraph-10, which reads as under:

> "10. No doubt the Government while declining to consider the case of petitioners favourably took into account a decision of this Court in Welfare Association of Absorbed Central Government Employees in Public Enterprises v. Union of India reported in 1991 (2) SCC 265, holding that the petitioners in 'Common Cause' case stand on a different footing than that of the petitioners in the present case. In that judgment Rule 37-A was not brought to the notice of the Court. Another reason given by the Government was that the petitioners on commuting their pension in full cease to be Central Government pensioners. This is too broad a contention to be accepted as no statute or rule is quoted in support of this contention. This stand taken by the Government does not appear to be correct in

view of their own counter-affidavit filed in this case. In para 8 at page 14 of the counter affidavit it has been stated as follows :-

> "It would be seen from (b) above that the twothird terminal benefits received by the absorbees is nothing but pension. Thus, the absorbees who have opted for lump sum payment have not only commuted one-third of their pension but also the remaining portion of two-third pension which is termed as "terminal benefits". The absorbees have in fact commuted the entire pension and not onethird of pension."

and submitted that the Central Government employees absorbed in public sector undertakings/enterprises and deemed to have retired from the date of such absorption and commuted the entire pension, do not cease to be pensioners. He further submitted that once the petitioner does not cease to be a pensioner, within the meaning of the Pension Rules, irrespective of commuting 100% of pension, he is entitled for benefits of the revised pension scheme as per the recommendations of the V Pay Commission. Learned counsel also relied upon the judgment reported in **WELFARE ASSOCIATION OF A.C.G.E. IN P.E. v. ARVIND VERMA**[2]**.** This is a case of contempt for non-implementation of the Orders passed by the Court in **WELFARE ASSOCIATION OF ABSORBED CENTRAL GOVT.EMPLOYEES v. UNION OF INDIA** (1 supra). Here, the Apex Court clarified that the petitioners therein are not only entitled for restoration of commuted part of the pension, but they be given revision in the pension (attendant benefits), which was not given to them on the ground that the same was not ordered in the Judgment and only ordered for restoration of pension.

Learned counsel for the respondents while reiterating the stand taken in the counter, had relied upon a Judgment reported in **DES RAJ BHATNAGAR v. UNION OF INDIA**[3] wherein it was held as under:

> "The commuting pensioner gets a lump sum amount which ordinarily he would have received in the course of his spread over period subject to his continuing to live. Thus, two advantages are certainly forthcoming out of commutation—(1) availability of a lump sum amount, and (2) the risk factor. In the present case, the petitioners, viz., the Central Government employees absorbed permanently in Public Sector Undertakings, after getting a lump sum in lieu of entire pension, fell in a different class altogether and were not entitled to claim any benefit granted to Central Government pensioners. The case of Central Government pensioners, who got their one-third pension commuted also fell in a different class inasmuch as they got two-third pension, and after 15 years of such commutation or having attained the age of 70 years, whichever was later, they become entitled to full pension. Petitioners on the other hand were not entitled to any pension after having received the lump sum amount in lieu of pension being commuted and having opted to receive such amount in lump sum at the time of entering the service in Public Sector Undertaking. Such persons cannot fall in the category of Central Government Pensioners for the purpose of getting benefit of Liberalized Pension Rules which can be made applicable only to Central Government pensioners. Though the family pension has been allowed in case of the persons like the petitioners, but that does not make them entitled to get any benefit given to the pensioners on account of the Liberalized Pension Rules taking note of the fallen value of the rupee."

and submitted that the employees opting for permanent absorption in public sector undertakings and availing the benefit of full amount of their original pension constitutes a class different from Central Government pensioners; therefore, they are not entitled to the benefit of Liberalized Pension Rules available to the Central Government pensioners. Learned counsel while relying upon the said Judgment contended that though the petitioner is entitled for restoration of his pension after completion of 15 years, but he is not entitled for the benefits of the revision, which had taken place in between i.e. the date of commutation of 100% pension and completion of 15 years period.

In view of the above pleadings, the only question that arises for consideration is whether the petitioner, who sought premature

retirement on 31-5-1991 and commuted 100% of his pension and sought employment in a public sector undertaking, is entitled for the benefits of Liberalized Pension Rules and also entitled to draw the difference of pension before the commutation period of 15 years lapsed ?

Though at the outset, learned counsel for the respondents stated that the petitioner is no more a pensioner since he has commuted 100% of his pension for considering his case as per the Liberalized Pension Rules, the Apex Court, in this regard, at paragraph 10 of **WELFARE ASSOCIATION OF ABSORBED CENTRAL GOVT. EMPLOYEES v. UNION OF INDIA** (1 supra) held that “this is too broad a contention to be accepted, as no statute or rule is quoted in support of this contention. This stand taken by the Government does not appear to be correct, in view of their own counter affidavit filed in this case. In para-8 at page 14 of the counter, it has been stated as follows:

> "It would be seen from (b) above that the twothird terminal benefits received by the absorbees is nothing but pension. Thus, the absorbees who have opted for lump sum payment have not only commuted one-third of their pension but also the remaining portion of two-third pension which is termed as "terminal benefits". The absorbees have in fact commuted the entire pension and not onethird of pension."

Thus, it must be deemed that though a Government servant/army personnel, who has commuted 100% of his pension cannot be said that he is not a pensioner. The recommendations of the V Pay Commission have come into force with effect from 1-1-1996. In this regard, the instructions issued by the Government of India, Ministry of Defence, in its letter No.1(1)/99/D(Pen/Services), dated 7-6-1999 may be necessary to be noticed:

2.1 **COMMISSIONED OFFICERS**:

Post & Pre – 1.1.1996 cases

(a) Pension shall continue to be calculated at 50% of the average emoluments in all cases and shall be subject to a minimum of Rs.1275/- p.m. and a maximum of upto 50% of the highest pay applicable to Armed Forces personnel, but the full pension in no case shall be less than 50% of the minimum of the revised scale of pay introduced w.e.f 1.1.96 for the rank last held by the Commissioned Officers at the time of his/her retirement. However, such pension shall be reduced pro-rata, where the pensioner has less than the maximum required services for full pension.

(b) & (c)……"

From the above, it is clear that the Commissioned Officer, who retired before or after 1-1-1996, is entitled for revision of scale of pay introduced with effect from 1-1-1996 for the rank last held by him at the time of his retirement, to calculate the pension at 50% of the average emoluments subject to a minimum of Rs.1275/- p.m., and a maximum of upto 50% of the highest pay applicable to Armed Forces Personnel, but the full pension in no case shall be less than 50% of the minimum of the revised scale. Admittedly, petitioner retired voluntarily with effect from 31-5-1991. Simply because he commuted 100% of the pension, I am of the opinion, it cannot be said that he is not entitled for revision of the pension - whether he had commuted 100% or 43% of the pension, he is a pensioner and is entitled for all the benefits as contemplated under the letter dated 7-6-1999. In this case, in view of the said letter dated 7-6-1999, petitioner opted for revision of pay and it was found that he is entitled for 50% of the minimum of the revised scales of pay introduced with effect from 1-1-1996 and since there was a difference of Rs.6,220/- that was sought to be paid to the petitioner.

Further, petitioner was not absorbed into the services of Hindustan Cables Limited nor he was on deputation at any point of time. He took voluntary retirement and thereafter, joined the services

of Hindustan Cables Limited. The respondents proceeded on the premise that the petitioner was absorbed into HCL. No provision of law or any of the letters issued by the Government of India, Ministry of Defence, is brought to the notice of this Court which says that a person, who has commuted 100% of his pension on his retirement from service, is not entitled for the benefits of revision under the Liberalized Pension Rules and the arrears therefor. It seems, this is all the notion of the Department. Whereas, a cursory look at Clause (12) of the Orders of the Government of India, Ministry of Defence in Procs.No.1(3)/98/D(Pens/Sers), dated 27-5-1998, shows that no commutation will be admissible for the additional amount of pension accruing as a result of the revision and the existing commuted portion of pension, if any, would continue to be deducted from the consolidated pension while making monthly disbursement. In other words, the pension can be revised as per the V Pay Commission recommendations, but the existing commuted portion of the pension, if any, would be continued to be deducted from the consolidated pension while making the monthly disbursements. In a given case, even if 100% of the pension is commuted and the revision is made thereafter, may be that the petitioner the pensioner is not entitled for further commutation of pension on revision, but he is entitled for difference of pension, after revision, every month.

I am of the opinion that the approach made by the respondents seems to be irrational and unconscionable. Take an example that a person, who retired from service and commuted 100% of the pension, after the Liberalized Pension Rules made applicable to him, he would get more amount than a person, who commuted 100% of his pension before 1-1-1996 to whom the Liberalized Pension Rules are also applicable. Thus, it appears, the object of the Scheme is not to

deny revision of pension to any of the cadres/personnel retired, but the object is to continue to deduct the existing commuted portion of the pension from the consolidated pension, after the revision has taken place. To give yet another example, that a person, who retired from service commuted 100% of his pension after the Liberalized Pension Rules and got pension 50% of the minimum revised pension with effect from 1-1-1996 and a person, who retired one year prior to him and sought employment in a public sector undertaking and commuted 100% of the pension. This is clear cut distinction between one class of people, who retired from service in the same rank. In fact, the Liberalized Pension Rules were made applicable taking note of the fallen value of the rupee. The difference as is found in the present case is Rs.,6220/- while calculating 50% of the minimum revised scale of pay introduced with effect from 1-1-1996. This is a huge amount and denial of such huge amount to a person, who retired one year prior to introduction of the Revised Pension Rules i.e. 1-1-1996, is unreasonable. Thus, there is a vast difference of pension between the person, who retired and commuted 100% of pension and a person, who retired one year thereafter and commuted 100% of his pension. Therefore, in this case, aptly the principle laid down in **D.S.NAKARA v. UNION OF INDIA**[4] is attracted. In the said case, it was held that pensioners form a class as a whole and cannot be micro-classified by an arbitrary, unprincipled and unreasonable eligibility criterion for the purpose of grant of revision pension. Further, the criterion of date of enforcement of the revised scheme entitling benefits of the revision to those retiring after that date while depriving the benefits to those retiring prior to that date is violative of Article 14 of the Constitution of India.

Further, in the Judgment reported in **WELFARE**

ASSOCIATION OF A.C.G.E. IN P.E. case (2 supra) while explaining the Judgment reported in **WELFARE ASSOCIATION OF ABSORBED CENTRAL GOVERNMENT EMPLOYEES IN PUBLIC SECTOR ENTERPRISES v. UNION OF INDIA** (1 supra) it was held that

> "……when we directed the respondents to restore the one-third portion of the commuted pension, it was intended to be given effect to, in letter and spirit, which means that the restoration of pension must be with attendant benefits as given to the Central Government pensioners".

Further, it was held as under:

> "…..we make it clear that the respondents are liable restore not only pension as ordered by this Court in the said Judgment, but also all the attendant benefits as given to the Central Government pensioners."

I am of the opinion that the respondents could not have cancelled benefits of Liberalized Pension Rules i.e. an amount of Rs.6,220/- per month, which was paid to the petitioner on revision of the pension. Seeking to recover the arrears on the ground that they were paid from 1-1-1996 and the denial of benefits of revised pension i.e. 50% of the minimum revised scales of pay introduced with effect from 1-1-1996 is arbitrary, discriminative and violative of Articles 14 and 16 of the Constitution of India. Further, as noticed above, the petitioner cannot be equated to that of a person deputed and absorbed into a public sector undertaking. Petitioner took voluntary retirement from service and joined in HCL; therefore, he cannot be equated to that of a person, who sought absorption either being on deputation or otherwise, to a public sector undertaking. The case of the petitioner has to be considered as normal retirement from service - whether he sought employment thereafter with any public sector undertaking or not

is irrelevant for the purpose of extending the benefits of Revised Pension Rules. It is further to be noted that no opportunity of hearing was given or any show cause notice has been issued asking the petitioner to explain as to why the revised benefits shall not be withdrawn, having been paid for more than 5 years, before passing the impugned Orders. This is in gross violation of principles of natural justice.

For all the above reasons, the impugned Orders are liable to be set aside and are accordingly set aside. Respondents are directed to restore the difference of pension payable to the petitioner in view of introduction of the Revised Pension Rules with effect from 1-1-1996 and pay arrears accrued therefor, within a period of eight (8) weeks from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is allowed. No order as to costs.

10-8-2007

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[1] 1996(2) SCC 187

[2] AIR 1998 SC 2862

[3] 1991(2) SCC 266

[4] 1983(1) SCC 305